

# State and Local Government in Louisiana: An Overview 2008-2012 Term

## CHAPTER 2 — STATE GOVERNMENT FUNCTIONS

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### Part L. Ethics and Related Matters

**T**he Code of Governmental Ethics is the primary body of law which regulates conflicts of interest of legislators and other public officials and employees. However, there are several other closely related issues that are covered by other provisions of law, such as election campaign finance and lobbyist/legislator relationships. This Part includes a discussion of ethics, campaign finance, and lobbyists, and also includes short sections on election code violations, related provisions of the criminal code, and causes and methods for removal from office.

The following summary is necessarily brief. Public officials and employees should familiarize themselves with the provisions of the Code of Governmental Ethics in more detail by reviewing R.S. 42:1101 et seq.

#### ETHICS

The Constitution of Louisiana declares that "legislative office is a public trust, and every effort to realize personal gain through official conduct is a violation of that trust". (Const. Art. III, §9) It mandates the legislature to enact a code of ethics prohibiting conflicts between the public duties and private interests of members of the legislature. In addition, the constitution requires that the legislature enact a code of ethics for all officials and employees of the state and its political subdivisions. (Const. Art. X, §21)

The Code of Governmental Ethics fulfills the above constitutional mandates by providing a comprehensive code covering all state and local elected officials (except judges), appointed officials, and employees. (R.S. 42:1101 et seq.) The Code of Governmental Ethics provides that judges shall be governed exclusively by the provisions of the Code of Judicial Conduct, which shall be administered by the Judiciary Commission provided for in Section 25 of Article V of the Constitution of Louisiana. (R.S. 42:1167)

#### Jurisdiction

The Board of Ethics is charged with administering and enforcing the ethics code with respect to elected officials and employees of the state and its political subdivisions, including legislators. An alleged ethics code violation may be investigated by the board upon receipt of a sworn complaint or upon a two-thirds vote of the board's membership. Information about the board, its opinions, and its agendas is available at the board's web site at ([www.ethics.state.la.us/](http://www.ethics.state.la.us/)).

#### General Prohibition - Gifts

A public servant (the term "public servant" includes elected officials, appointed officials, and public employees) is prohibited from soliciting or receiving any thing of economic value as a gift from a paid lobbyist or person who has or is seeking to obtain a contractual or business relationship with the public servant's agency. A public servant is also generally prohibited from

receiving any thing of economic value from a private source for the performance of his or her public duties. (R.S. 42:1111 and 1115) There are specific exceptions for legislators (see below).

However, a public servant may receive promotional items having no substantial resale value. A public servant may also consume food, drink, or refreshments and receive "reasonable transportation and entertainment incidental thereto" while the personal guest of some person. (R.S. 42:1102(22))

### Legislators; Specific Provisions

Several provisions of the Code of Governmental Ethics make specific reference to legislators:

- Transportation: Educational/Informational (R.S. 42:1102(22))

Legislators and legislative branch employees may receive and accept "reasonable transportation" when organized primarily for educational or for informational purposes, including on-site inspections. This includes transportation to any point within the boundaries of Louisiana, including its territorial waters, and to any offshore structure located on the outer continental shelf seaward of the territorial waters and offshore of Louisiana. Legislators and legislative branch employees may also receive food and drink incidental to such transportation.

- Transportation: Entertainment Purposes Only (R.S. 42:1102(22))

With reference to legislators only, "reasonable transportation" when organized primarily for entertainment purposes incidental to food, drink, or refreshments, includes transportation to any point within Louisiana that is within a 50-mile radius of the perimeter of the legislator's district, or within a 50-mile radius of the perimeter of East Baton Rouge Parish, if the legislator is conducting official business in that parish.

- Speaking Engagements (R.S. 42:1123(16))

When making a "public speech", a legislator may accept food, refreshments, and lodging reasonably related to making such speech, as well as reasonable round-trip transportation from his home or the Capitol to the site of the speaking engagement from the sponsoring group or organization, provided the speech is given in any state of the United States or Canada and full disclosure of such transaction is made by affidavit to the Board of Ethics within 60 days of the speech. "Public speech" is defined in this context as a speech or other oral presentation, including a panel discussion, or radio or television appearance before the public at large or any civic, political, religious, educational, or eleemosynary group or organization, by a legislator in his capacity as a legislator.

- Sporting and Cultural Events (R.S. 42:1123(13))

An elected official may receive any thing of economic value as a gift or gratuity from any person where the value of such gift does not exceed \$100 per event or up to an aggregate amount of \$500 in a calendar year if the nature of the gift is limited to a cultural or sporting event within the state, including its territorial waters, including entertainment reasonably incidental thereto. This exception also applies to an elected official who is on official business of his governmental entity outside of the state when the elected official is entitled to compensation or reimbursement for such official business.

- **Contracts with the State (R.S. 42:1113(D))**

The ethics code prohibits a legislator, legislator-elect, spouse of a legislator or legislator-elect, and any corporation, partnership, or other legal entity in which a legislator, legislator-elect, or spouse of a legislator or legislator-elect owns any interest, excluding publicly traded corporations, from entering into any contract or subcontract with any branch, agency, department, or institution of state government, the Insurance Guaranty Association, the Louisiana Health Insurance Guaranty Association, or any other quasi public entity created by law. Contracts awarded pursuant to public bid or a request for proposal or similar competitive process as provided by law are excepted. There are a number of other exceptions (see table Exceptions to Prohibitions on Legislator's Contracts with State Agencies).

Exceptions to Prohibitions on Legislator's Contracts with State Agencies
<ul style="list-style-type: none"> <li>• Provider agreements entered into with the Department of Health and Hospitals under the state medical assistance program</li> <li>• Foster parent provider agreements and child care provider agreements entered into with the Department of Social Services</li> <li>• Completion of contracts or subcontracts entered into prior to initial election to the legislature; however, no such contract or subcontract may be renewed</li> <li>• Completion of contracts or subcontracts entered into prior to July 1, 1995; however no such contract or subcontract may be renewed</li> <li>• Contracts for employment in a professional educational capacity in an elementary or secondary school or other educational institution</li> <li>• Contracts of sale pursuant to the expropriation of immovable property by any branch, agency, department, or institution of state government</li> <li>• Contracts of employment of a physician with the state or the charity hospitals of the state (see discussion of R.S. 42:63(F) below)</li> <li>• Donation of professional veterinary services or the donation of goods and services related to the provision of such veterinary services.</li> </ul>

- **Financial Disclosure (R.S. 42:1114, 1114.1, and 1114.3)**

Each member of the legislature must file a report of income received during the preceding calendar year from the state or a political subdivision or for services performed for or in connection with a gaming interest, including such income received by the member, the member's spouse, or any business enterprise of which the member or his or her spouse owns at least 10%. This report is filed with the chief clerical officer of the house to which the member belongs by July first of each year of his or her term of office. Income of \$250 or less is excluded. The report also must include a certification that the member has filed his or her federal and state income tax returns or has filed for an extension of time for filing such tax returns.

Income specifically included in the reporting requirement includes: remuneration received under any verbal or written contract of employment, fees received for professional services less expenses paid to third parties, and with respect to the sale or lease of immovable property, merchandise, or equipment, the net income, prior to taxation, received from each sale or lease. Income specifically excluded from the reporting requirement includes: remuneration from the legislature, salary for full-time employment of the member's spouse, salary of the member's spouse when the spouse is an elected official, and benefits from a statewide public retirement system.

On or before July 15, the secretary of the Senate and the clerk of the House must send the Board of Ethics copies of all disclosure reports filed with them and must notify the board in writing of any members who have not filed such reports. Failing to file a

report, failing to timely file a report, failing to disclose required information, or filing a false report subjects a member to penalties provided in the Code of Governmental Ethics and also constitutes contempt of the house to which the member belongs (see House Rule No. 4.8).

A legislator and any member of his immediate family who derives any thing of economic value, directly, through any transaction involving the legislative branch, or who derives any thing of economic value of which he may be reasonably expected to know through a person who has bid on or entered into or who is in any way financially interested in any contract, subcontract, or any transaction involving the legislative branch, must disclose the amount of income or value derived, the nature of the business activity, and, as applicable, the name and address and relationship to the legislator, and the name and business address of the legal entity. This report is due to the Board of Ethics no later than the first of May each year.

Subject to certain exceptions, each elected official, appointed state official, and immediate family member of an elected official or appointed state official who derives, either directly or through a legal entity in which such official or immediate family member owns 10% or more, any thing of economic value through any contract or subcontract which is related to a gubernatorially declared disaster or emergency and which the official or immediate family member knows or reasonably should know is or may be funded or reimbursed in whole or in part with federal funds, must disclose certain information concerning the contract or subcontract.

#### All Public Servants

The ethics code contains ethical standards for public servants generally. As public servants, the following also apply to legislators:

- Payments from nonpublic sources (R.S. 42:1111)

A public servant is generally limited to receiving only compensation and benefits to which he is duly entitled from the appropriate governmental entity for performance of the duties of his office. Restrictions, and in some cases prohibitions, are placed upon receiving payments from nonpublic sources. For example, an elected official is prohibited from receiving or agreeing to receive any thing of economic value for assisting a person in a transaction or in an appearance in connection with a transaction with the governmental entity or its officials or agencies unless he files a sworn written statement with the Board of Ethics prior to or at least ten days after initial assistance is rendered. For legislators, the term "governmental entity" means the state.

No public servant may receive any thing of economic value for any service, the subject matter of which: (1) is devoted substantially to the responsibilities, programs, or operations of the agency of the public servant and in which the public servant has participated; or (2) draws substantially upon official data or ideas which have not become part of the body of public information.

No public servant and no legal entity in which the public servant exercises control or owns an interest in excess of 25% may receive any thing of economic value for or in consideration of services rendered, or to be rendered, to or for any person during his public service unless such services are: (1) bona fide and actually performed by the public servant or by the entity; (2) not within the course of his official duties; (3) not

prohibited by provisions relative to transactions in which the public servant or certain affiliated persons has an interest (see R.S. 42:1112), or by applicable laws or regulations governing nonpublic employment for such public servant; and (4) neither performed for nor compensated by any person who has or is seeking to obtain a contractual or other business or financial relationship with the public servant's agency. There is a limited exception for a certain period of time for the completion of contracts entered into prior to election provided that certain requirements are met.

- Transactions involving the governmental entity (R.S. 42:1112 and 1120)

A public servant is prohibited from participating in certain transactions involving the governmental entity in which he or specified other persons have an interest. An elected official must recuse himself from voting on matters that may constitute a conflict of interest. However, an elected official shall not be required to recuse himself if he prepares and files a written statement describing the matter in question, the nature of the conflict or potential conflict, and the reasons why, despite the conflict, he is able to cast a vote that is fair, objective, and in the public interest. (Note: A legislator must file this disclosure statement with the Board of Ethics as well as with the chief clerical officer of the legislative body or the legislative committee in which the vote is taken. The statement must be filed within three days of the vote, and a copy of the statement in the journal, minutes, or record must be filed with the ethics board. This exception extends only to voting and not to other acts of participation.)

- Prohibited contracts (R.S. 42:1113)

Certain contractual arrangements between public servants, and certain family members, and public entities are prohibited. For example, a legislator, a member of his immediate family, or a legal entity in which he has a controlling interest is prohibited from bidding on or entering into or being in any way interested in any contract, subcontract, or other transaction involving the legislative branch. "Controlling interest" means any ownership in any legal entity or beneficial interest in a trust, held by or on behalf of an individual or a member of his immediate family, either individually or collectively, which exceeds 25% of that legal entity. "Immediate family" as it relates to a public servant means his children, the spouses of his children, his brothers and their spouses, his sisters and their spouses, his parents, his spouse, and the parents of his spouse. (Note: Also see Contracts with the State, below, relative to other prohibited contracts.)

- Prohibitions Following Public Service (R.S. 42:1121)

An elected official is prohibited for a period of two years following the termination of his elected public service from assisting another person for compensation in a transaction or in an appearance in connection with a transaction involving his former agency (the legislative branch for a legislator) and from rendering any service on a contractual basis to or for such agency. Also, a legal entity in which a former public servant is an officer, director, trustee, partner, or employee is prohibited for a period of two years following the termination of his public service from assisting another person for compensation in a transaction or in an appearance in connection with a transaction in which the public servant at any time participated during his public service and involving his former agency. Former public servants are also prohibited from sharing in any compensation received by another person for assistance that the former public servant would be prohibited from rendering.

## Other Ethical Standards

In addition to the above standards, the ethics code includes provisions prohibiting abuse of office, illegal payments, influencing legislative action, and nepotism (R.S.42:1116, 1117, 1118, and 1119). Specific exceptions to the code are outlined in R.S. 42:1123.

- Abuse of Office (R.S. 42:1116)

Using one's office or position with the intent to compel or coerce someone to provide any thing of economic value to anyone is prohibited. Using one's office or position, directly or indirectly, in a manner intended to compel or coerce any person or other public servant to engage in political activity is also prohibited. In addition, a regulatory employee is prohibited from participating in the sale of goods or services to a person regulated by his public agency.

In addition to prohibitions in the ethics code, there are other conflict of interest provisions in the law. For example, a legislator is prohibited by R.S. 24:31.5 from employing a member of his family as a legislative assistant. There are also provisions in the Louisiana Gaming Control Law which prohibit certain public officials from engaging in certain business relationships with riverboat gaming licensees and casino operators (R.S. 27:96 and 261).

- Penalties (R.S. 42:1153, 1154, 1155, 1157, and 1124.1)

General penalties for violations of the ethics code include censure and fines of not more than \$10,000. The code also provides for certain civil penalties and late filing fees.

## CAMPAIGN FINANCE

The Board of Ethics also functions as the Supervisory Committee on Campaign Finance Disclosure. The Campaign Finance Disclosure Act requires reports of campaign contributions and expenditures for candidates and political committees. It also prohibits certain campaign conduct and limits the amounts of campaign contributions. Louisiana law does not use the term "PAC" (political action committee); the terms "committee" and "political committee" are used. Depending upon the specific context, committee may mean a candidate's committee (which reports with the candidate) or a committee not established by a candidate that supports or opposes one or more candidates. The latter is informally referred to as a PAC. More information regarding the Board of Ethics, including campaign finance reports that have been filed and opinions issued regarding campaign finance matters, can be found on the board's web site ([www.ethics.state.la.us/](http://www.ethics.state.la.us/)).

Candidates are divided into three categories: major office (statewide, PSC, supreme court, BESE, certain other offices in districts with a population over 250,000, and certain specified judicial offices); district office (legislature, parishwide and multi-parish (except those that are major), districts of over 35,000 population, and certain specified judicial offices), and any other office.

## Records and Reports

All contributions and expenditures must be reported, and the report must aggregate them for each contributor or recipient. Therefore, complete records must be kept including the sale of tickets to testimonials or other fundraising events. The records should contain the date, amount,

and name and address of each contributor or recipient. However, the name and address of each purchaser of campaign paraphernalia for \$25 or less need not be kept.

- Reports must be filed with the supervisory committee on a statutorily established schedule. For a legislative candidate this generally means two reports before the primary election, an Election Day Expenditure report for the primary election, another report before the general election, an Election Day Expenditure report for the general election, and one report after the general election. There are also Special 48 Hour Reports that must be filed if certain transactions occur during the election cycle. (See below.) In addition to these reports, which occur during the months of the campaign, there are other campaign reports which may be required of a candidate or his principal campaign committee.
- If the candidate's or committee's final report shows a deficit, a supplemental report must be filed by February 15. This report must be filed annually until the reportable debts and obligations of the campaign have been extinguished. Supplemental reports must also be filed if the final report of a candidate, former candidate, or committee shows a surplus until the surplus is disposed of.
- Even if the candidate or committee has no deficit, an annual report must be filed on February 15 unless:
  - The candidate or committee has filed another required report, such as a supplemental report, after the preceding December 10th and prior to the February 15th due date;
  - The candidate filed a supplemental report and has not otherwise become a candidate during the reporting period; or
  - The candidate or committee has not received contributions or made expenditures, or made or received loans, or made or received transfers of funds during the reporting period.
- In certain instances involving small campaigns (for a legislator, contributions of less than \$200 and expenditures of no more than \$5,000 during the aggregating period) the candidate or his committee may file an affidavit in lieu of a report.
- During the 20 days prior to an election through midnight of election day, a report must be filed within 48 hours of any contribution or loan in excess of \$500 or an expenditure in excess of \$200 to a candidate, committee, or someone required to report who makes endorsements.
- A special report of election day expenditures must be filed not later than 10 days after each election.
- Reports filed by certain candidates for statewide office are required to be filed electronically. All other candidates have the option of either filing paper copies or filing electronically. However, all reports once filed are available on the board's web site ([www.ethics.state.la.us/](http://www.ethics.state.la.us/)).

## Contribution Limits

The Campaign Finance Disclosure Act specifically limits campaign contributions to legislative candidates and their committees to \$2,500, except that for contributions made by political committees with over 250 members, at least 250 of which each contributed at least \$50 to the political committee during the preceding calendar year, the limit is \$5,000. These contribution limits are per election (the primary and general election are separate elections) and do not apply to a candidate's use of his personal funds or any contributions made by a recognized political party or its committees. Legislative candidates may not accept more than \$60,000 in contributions from political committees (other than recognized political parties) for both the primary and general elections.

CONTRIBUTION LIMITS/LEGISLATIVE CANDIDATES	
	To a legislative candidate or his committee per election <sup>1</sup>
Individual may give <sup>2</sup>	\$2,500
Family member of candidate may give	\$2,500
Legal entity may give <sup>3</sup>	\$2,500
PAC may give <sup>4</sup>	\$2,500
Big PAC <sup>5</sup> may give <sup>4</sup>	\$5,000
Democratic or Republican Party or committees may give	No limits

<sup>1</sup> The primary and general elections are considered as two separate elections.

<sup>2</sup> A husband and wife may each make a contribution to the same candidate up to the limit. However, separate checks should be used. If a single check is signed by one spouse, the other must provide an affidavit as to their intent to share in the contribution.

<sup>3</sup> Includes legal entities owned wholly or partially by candidates, except Internal Revenue Code Subchapter S corporations and LLCs wholly owned by the candidate. Parent corporations and their subsidiaries are subject to a single limit. A corporation is a parent if it owns over 50% of another corporation. A wholly owned Subchapter S corporation and its owner and a wholly owned LLC and its owner are subject to a single limit.

<sup>4</sup> Candidates are also subject to an aggregate limit on the contributions they may accept from all PACs combined for both the primary and general elections. Those limits are: \$80,000 - major office, \$60,000 - district office, and \$20,000 - any other office.

<sup>5</sup> A PAC with over 250 members, at least 250 of which each contributed over \$50 to the PAC during the preceding calendar year, that has been certified as meeting such membership requirement.

## Use of Campaign Funds

The campaign finance laws prohibit the personal use of campaign contributions unrelated to a political campaign or to the holding of a public office or a party position. The provisions of the Campaign Finance Disclosure Act specify the purposes for which excess campaign funds may be used.

## Prohibitions

The Campaign Finance Disclosure Act specifically prohibits the following:



- The contributing of money, materials, or loans to support a candidate or political committee through or in the name of another, directly or indirectly.
- Expenditures from funds which have been contributed anonymously. Anonymous contributions must be paid over to the state.
- Cash contributions in excess of \$100 during a calendar year. Any cash contribution of \$100 or less must be evidenced by a receipt containing the name, address, social security number, and signature of the contributor.
- Contributions from certain persons substantially interested in the gaming industry. Candidates or committees who accept gaming contributions must pay those contributions over to the state within 10 days of notification by the supervisory committee. (Note: In the case of *Claude M. Penn, Jr. v. State of Louisiana*, 751 So.2d 823, the state Supreme Court found a portion of this prohibition unconstitutional insofar as it precludes contributions to candidates and political committees by video draw poker licensees and related persons. However, in the case of *Casino Association of La., Inc. v. State of Louisiana*, 820 So.2d 494, the state Supreme Court upheld the constitutionality of the prohibition as applied to riverboat and land-based casino licensees.)
- Contributions from foreign nationals. Candidates or committees may not accept contributions from foreign nationals and must pay such contributions over to the state within 10 days of notification by the supervisory committee.
- The use of federal campaign funds by a candidate for state office to support his state candidacy.
- The acceptance by an elected official of a contribution from any person who has entered into a contract or a direct subcontract of such contract or a transaction to provide goods or services related to hurricane rebuilding efforts which contract or transaction is not publicly or competitively bid if such contract or transaction is under the jurisdiction or supervision of the agency of the elected official. If an elected official receives such a contribution, it must be paid over to the state. Any elected official who accepts a contribution from such a person knowingly and willfully shall be assessed a penalty equal to twice the amount of the contribution. This prohibition is effective until July 10, 2009.
- The acceptance by a candidate for the office of the commissioner of insurance of any campaign contribution, loan, or transfer of funds or acceptance and use of any in-kind contribution for his campaign from any service provider who has contracted with the Louisiana Citizens Property Insurance Corporation and which service provider subcontracts with insurance adjusters to adjust claims for the Louisiana Citizens Property Insurance Corporation.
- Expenditures in excess of \$100 from petty cash and expenditures from petty cash for any personal services except gratuities for the serving of food or drink.
- A campaign contribution from a corporation, labor organization, or trade, business, or professional association without that entity first obtaining the appropriate authorization from its membership or officers. Such contributions

must be by check or in-kind. The board of directors of a corporation may designate a person by resolution to make contributions and expenditures on its behalf.

- The receipt of contributions, or expenditures, loans, or transfers of funds to or from a committee to another committee in the aggregate in excess of \$500 during a calendar year until the committee has filed an annual statement of organization.
- A contribution by a candidate to any committee required to file an annual statement of organization which has not filed such a statement.
- Giving or accepting any thing of economic value, including reimbursement, for conveying an elector to a polling place to vote. There are specified exceptions for certain bona fide and permitted or licensed transportation.
- Accepting or depositing a contribution, loan, or transfer of funds during a regular session when running for a state legislative office, unless the election is to occur during the session or within 60 days after adjournment.
- The expenditure of funds derived from contributions for any purpose by a candidate or his principal or subsidiary campaign committee so long as the candidate owes a fine, fee, or penalty imposed by a final order of a court or the supervisory committee pursuant to the Campaign Finance Disclosure Act and against which all appeal delays have lapsed. Any person who makes an expenditure in violation of this prohibition may be assessed a civil penalty not to exceed 200% of the expenditure or \$1,000, whichever is greater.

### Use of Surplus Campaign Funds

R.S. 18:1505.2(I) lists the following specific permissible uses for excess campaign funds:

- Returning to contributors on a pro rata basis.
- Giving as a charitable contribution as provided in 26 U.S.C. 170(c) or to a charitable organization as defined in 26 U.S.C. 501(c)(3).
- Expending in support of or in opposition to a proposition, political party or candidate.
- Maintaining in a segregated fund for use in a future political campaign or activity related to preparing for a future candidacy to elective office.

(Note: The limitations on use of excess campaign funds apply only to contributions received by a candidate or political committee on or after January 1, 1991.)

### Penalties

For a legislator, the civil penalty for knowingly and willfully failing to file reports timely and accurately is a fine not to exceed \$60 per day up to a total penalty of \$2,000. Criminal penalties are provided for a knowing, willful, and fraudulent failure to file or timely file a report. The criminal penalty for a legislator is six months in jail, or a fine of up to \$500, or both.

## Related Provisions

Though not part of the Campaign Finance Disclosure Act, the following related provisions of law should also be noted:

- **Fundraising Functions During Legislative Sessions**

Accepting or depositing contributions during a regular session is generally prohibited by the Campaign Finance Disclosure Act when running for a state legislative office. However, if a legislator is not running for a state legislative office, or if the election is to occur during the session or within 60 days after adjournment, the legislator must give prior written notice to the Board of Ethics in order to have a fundraising function during a regular or extraordinary legislative session. (Note: Also see Lobbying/Lobbyists below.)

- **Election Offenses**

The Election Code prohibits certain knowing, willful, or intentional conduct relating to elections (see accompanying table Selected Election Offenses).

- **Contribution in Return for Endorsement**

The election code provides that no person shall solicit or receive funds nor any thing of value from a candidate or political committee and no candidate or political committee or other person shall pay any funds or any thing of value to any person for the purpose of endorsing, supporting, opposing, or securing an endorsement, support of or opposition to any candidate. The provisions are not to be construed to prohibit the payment by a candidate, political committee, or other person of funds or any thing of value to a person in return for the conducting, by the person to whom the payment is made, of a social function which is in support of or in opposition to a candidate or political committee or which otherwise seeks to influence an election. (R.S. 18:1468)

- **Bribery of a Candidate**

Bribery of a candidate is defined by the election code as the giving, promising or offering to give, directly or indirectly, a campaign contribution to a candidate, political committee, or other person, or the

### Selected Election Offenses (R.S. 18:1461)

No person shall:

- ! Offer, promise, solicit, or accept money or any thing of present or prospective value to secure or influence a vote or registration of a person.
- ! Intimidate, directly or indirectly, any voter or prospective voter in matters concerning voting or nonvoting or registration or nonregistration.
- ! Offer money or any thing of present or prospective value or use, directly or indirectly, any form of intimidation to influence the action or encourage inaction of any public official with regard to the duties of his office or to influence a commissioner or watcher in his decision to serve or not to serve as such or in the performance of his duties on election day.
- ! Register, vote, or attempt to register or vote in the name of another or in an assumed or fictitious name, or in any manner other than as provided in the Election Code.
- ! Give or offer to give, directly or indirectly, any money or thing of present or prospective value to any person who has withdrawn or who was eliminated prior or subsequent to the primary election as a candidate for public office, for the purpose of securing or giving his political support to any remaining candidates or to candidates for public office in the primary or general election.

accepting, soliciting, offering to accept, directly or indirectly, a campaign contribution, by a candidate, political committee or other person, with the intention that the candidate will provide or influence another to provide the contributor or another person a position of public employment, an appointive governmental position, a public contract, or any thing of apparent present or prospective value. (R.S. 18:1469)

## LOBBYING/LOBBYISTS

The primary laws regulating legislative lobbying are found at R.S. 24:50 et seq. These statutes provide for the registration of lobbyists, provide for certain reports of their expenditures, and prohibit certain conduct. Only "lobbyists" as defined in the law are regulated. Statewide elected officials and their designees are specifically excluded from the application of the law.

It should be noted that there are similar provisions that regulate executive branch lobbying (see R.S. 49:71 et seq.).

### Key Definitions

- **Lobbyist:** A person employed or engaged for compensation to act in a representative capacity for the purpose of lobbying if lobbying constitutes one of the duties of such employment, or any person who receives compensation of any kind to act in a representative capacity when one of the functions for which compensation is paid is lobbying and who makes expenditures of \$500 or more in a calendar year for the purpose of lobbying.
- **Expenditure:** The gift or payment of money or any thing of value when the amount of value exceeds \$10 for the purchase of food, drink, or refreshment for a legislator and any gift or payment as permitted by ethics code provisions relative to speaking engagements and sporting and cultural events (R.S. 42:1123(13) and (16)) when the value exceeds \$10 for the purpose of lobbying when the lobbyist or principal accounts or would be expected to account for the expenditure as an ordinary and necessary expense directly related to the active conduct of the lobbyist's, his employer's, or the principal's trade or business.
- **Lobbying:** A direct act or communication with a legislator, the purpose of which is to aid in influencing the passage or defeat of any legislation.
- **Legislation:** Bills, resolutions, concurrent resolutions, joint resolutions, amendments, nominations, and other matters pending or proposed in either house of the legislature. It includes any other matter which may be the subject of action by either house.

### Registration

Each lobbyist must register with the Board of Ethics within five days of employment as a lobbyist or within five days after the first action requiring his registration. Registration must be renewed annually between December 1 and January 31. Registration requires specified information, including the lobbyist's name and business address; the name and address of the person who employs him and, if different, whose interests he represents, including the business in which that person is engaged; the name of each person by whom he is paid or is to be paid; and a copy of a recent photograph. A \$110 fee must accompany each registration and each renewal registration form filed. If registration information changes, a supplemental registration must be filed.

## Reports

Each lobbyist must file a report semiannually with the Board of Ethics of all expenditures incurred for the purpose of lobbying.

- **Reporting Periods.** The first reporting period is January 1 through June 30, and the report is due by August 15. The second reporting period is July 1 through December 31, and the report is due by February 15.
- **Contents.** Each report must include:
  - ▶ Total expenditures (as defined) during the reporting period.
  - ▶ If the aggregate expenditure for any one legislator exceeds \$50 on one occasion, or if the aggregate expenditure for one legislator exceeds \$250 in a reporting period, the total amount of expenditures for the legislator (by name) during the reporting period.
  - ▶ The aggregate total of expenditures for all reporting periods during the same calendar year.
  - ▶ The aggregate total of all expenditures attributable to an individual legislator (by name) for all reporting periods in the same calendar year.
  - ▶ A statement of the total expenditures for each reception or social gathering to which the entire legislature, either house, any standing committee, select committee, statutory committee, committee created by resolution of either house, subcommittee of any committee, recognized caucus, or any delegation thereof, is invited, including the name of the group or groups invited and the date and location of the reception or social gathering.
- **Exempt expenditures.** Any expenditure (as defined) for any reception or social gathering sponsored in whole or in part by a lobbyist, individually or on behalf of a principal he represents, held in conjunction with a meeting of a national or regional organization of legislators or legislative staff to which any legislator is invited is exempt from the lobbying laws. In addition, any expenditure for any meal or refreshment consumed by or offered to a legislator in connection with the legislator giving a speech, being a member of a panel, or otherwise being involved in an informational presentation to a group is not reportable, except that such types of expenditures for out-of-state speeches permitted by R.S. 42:1123(16) must be reported.
- **Public records.** Reports and forms filed by lobbyists are required to be maintained as public records and are available for public inspection. A reasonable amount may be charged for copies.

## Prohibited Conduct

- **Fundraising during a Legislative Session.** As noted previously, accepting or depositing contributions during a regular session is generally prohibited when running for a state legislative office. If a legislator is not running for a state legislative office, or if the election is to occur during the session or within 60 days, R.S. 24:56 requires 30 days prior written notice be given to the Board of Ethics in order to hold a fundraising

function for or by a legislator during a regular legislative session. A lobbyist, for himself or his principal, is prohibited from offering or providing to a legislator or his principal campaign committee any campaign contribution or loan resulting from a fundraising function held during a legislative session unless the required notice has been given. In addition, unless the required notice is given, a legislator may not solicit or receive any campaign contribution or loan for himself or his principal campaign committee from a lobbyist or his principal resulting from a fundraising function held during a legislative session. R.S. 24:56.1 provides that no fundraising function shall be held for or by a legislator during an extraordinary ("special") session unless notice of the function has been filed with the Board of Ethics within two business days after the issuance of the proclamation stating the objects of the session. (R.S. 24:56)

- **Lobbying by State Employees.** A state employee (in his official capacity or on behalf of his employer) is prohibited from lobbying for or against any matter intended to have the effect of law pending before the legislature or any legislative committee. The prohibition does not prevent the dissemination of factual information relative to any such matter or the use of public meeting rooms or meeting facilities available to all citizens to lobby for or against any such matter.

## Enforcement

The Board of Ethics is responsible for the administration and enforcement of the lobbying laws. The board has authority to impose penalties and to collect them as provided in the ethics code, and the board may recommend to the legislature that the legislature censure any person the board finds guilty of violations and prohibit such person from lobbying for not less than 30 days and not more than one year. No action to enforce the law can be taken after two years after the alleged violation.

## Penalties

In addition to other penalties, the failure to register or timely register or failure to timely file any report is subject to a late fee of \$50 per day. For registrations or reports that are 11 or more days late, in addition to late fees, a civil penalty not to exceed \$10,000 must be assessed.

## Lobbying/Expenditure of Appropriated Funds

R.S. 43:31(D), relative to regulation of printing by state agencies, states in part that no entity of state government shall "expend funds of, administered by, or under the control of any . . . entity of state government to print material or otherwise to . . . lobby for or against any proposition or matter having the effect of law being considered by the legislature . . ." This provision does not, however, prevent the normal dissemination of factual information relative to a proposition on any election ballot or a proposition or matter having the effect of law being considered by the legislature.

## Lobbying/House Employees

House Rule No. 3.4 prohibits employees of the House of Representatives from lobbying for or against, or under any other guise engaging in any activity in support of or in opposition to, any legislative instrument or other matter before the House of Representatives or the Senate during the course of any legislative session. Any such activity is cause for immediate dismissal from employment.

## CRIMINAL LAWS RELATED TO PUBLIC OFFICE

Louisiana's Criminal Code defines and prohibits a number of criminal offenses relating to public office and holders of public office. These include: public bribery (R.S. 14:118); bribery of voters (R.S. 14:119); corrupt influencing (R.S. 14:120); public intimidation (R.S. 14:122); threatening a public official (R.S. 14:122.2); perjury (R.S. 14:123); false swearing (R.S. 14:125); injuring public records (R.S. 14:132); filing false public records (R.S. 14:133); malfeasance in office (R.S. 14:134); public salary deduction (R.S. 14:135); public salary extortion (R.S. 14:136); public payroll fraud (R.S. 14:138); political payroll padding (R.S. 14:139); public contract fraud (R.S. 14:140); prohibited splitting of profits, fees or commissions (R.S. 14:141); bribery of withdrawn candidates (R.S. 14:352).

## REMOVAL FROM OFFICE

### Impeachment

Article X, Section 24 of the Constitution of Louisiana provides for impeachment of state or district officials. Such an official, whether elected or appointed, is subject to impeachment for commission or conviction, during his term of office of a felony or for malfeasance or gross misconduct while in such office. An impeachment proceeding is instituted in the House of Representatives. The Senate conducts the trial and two-thirds of the elected senators must concur to convict. Such conviction results in immediate removal from office.

### Felony Conviction

The legislature has provided for the removal of public officers by suit in R.S. 42:1411 et seq. Pursuant to R.S. 42:1411, a public officer shall automatically be suspended from office for conviction of a felony, without compensation. The public officer shall be removed from office upon that conviction becoming final, but shall be reinstated, with back wages, should the conviction be overturned on appeal.

### Recall

The state constitution also provides in Art. X, §26 for the recall by election of any state, district, parochial, ward, or municipal official, except judges of the courts of record. The general statutes relative to recall elections are provided in R.S. 18:1300.1 et seq.

### Election Law Offenses

R.S. 18:1461(C)) provides that any candidate who is elected to public office and who is convicted of one or more of certain election law offenses committed while running for the office to which he was elected, will forfeit such public office. Upon such conviction becoming final, the public office is declared vacant.

